

THE EFFECTIVE DATE OF THIS ORDINANCE IS NOVEMBER 16, 2006

ORDINANCE NO. 06-38-435

OPINION, FINDINGS AND ORDINANCE
OF
THE BOARD OF COUNTY COMMISSIONERS
OF
FREDERICK COUNTY, MARYLAND

RE: APPLICATION OF TOLL BROTHERS, INC.

REZONING CASE NO. R-05-08

OPINIONS/FINDINGS

Toll Brothers, Inc. filed this application to rezone 43.15 acres of land, more or less, from Agriculture (A) to Planned Unit Development (PUD), all as more fully described in the record. The property is located on the north corner of Elmer Derr Road and New Design Road in the Adamstown Planning Region.

Planning Division staff recommended approval of the proposed PUD zoning with four conditions. The maximum land use density recommended by the Planning Division staff is based on the project proposal to consist of 237 dwelling units on the 43.15 acres. This calculates to a gross PUD density of 5.5 dwelling units per acre. The proposed type of development for the PUD is residential. Of the 43.15 gross acres on the site, 19.13 acres have been allocated for single family dwelling units and 24.02 for townhouse units.

Based on all the evidence submitted in this case, the Board makes the following specific findings of fact (in addition to the findings above) on each of the matters mentioned in Md. Code Annotated Article 66B, § 4.05(a):

1. POPULATION CHANGE. The current population of the one-mile neighborhood as defined in the Staff Report is 3,733. With a potential for 237 dwellings, the development could have a population of 714 based on an average household size of 3.01 people per household for this neighborhood.
2. AVAILABILITY OF PUBLIC FACILITIES.

A. SCHOOLS.

As of December 31, 2005, Tuscarora Elementary School is at 104% capacity, Crestwood Middle School is at 89% capacity and Tuscarora High School is at 118% capacity. The pupil yield from the proposed PUD would be approximately 48-58 elementary, 24-29 middle school and 25-31 high school students. This pupil yield is based on a range of 48-67 single family detached dwelling units and 168 - 192 townhouse units and uses the pupil yield factors for the schools serving the site.

B. FIRE AND RESCUE SERVICES.

The site is served by the Westview Station (United Steam Fire Engine Company No. 3) located 1.75 miles from the site. Emergency services would also be provided by the Jefferson Volunteer Fire Company, the Braddock Heights Volunteer Fire Company and the Carroll Manor Volunteer Fire Company, all located between four and five miles from the site.

C. POLICE SERVICE.

The Frederick County Sheriff's Department and the Maryland State Police provide police protection.

D. PARKS AND RECREATION FACILITIES.

The proposed PUD will offer 15.10 acres of open space green area, at least 3.96 acres of which will be developed as Recreation Areas.

The County's Ballenger Creek park is located approximately 1.25 miles northwest of the site.

E. LIBRARIES

The Ballenger Creek area is served by Frederick County's central library facility in Frederick City, approximately 5 miles from the site.

F. WATER AND SEWER

The site is classified S-4 DEV/W-4 DEV (service in 4 - 6 years) in the County's Master Water and Sewerage Plan. Public water and sewer service is currently provided on the site. Water service is provided by a 24 inch line, while sewer is provided by a 10 inch line. Both lines are located in the right-of-way of New Design Road. Water treatment is provided by the New Design Road Water Treatment Plant and is supplied from the Potomac River. Sewage treatment is provided by the Ballenger Creek Wastewater Treatment Plant. There is presently limited remaining capacity at the Ballenger Creek Wastewater Treatment Plant, however, with a planned addition referred to as the McKinney Wastewater Treatment Plant, additional capacity will be provided.

The current fiscal year 2006-2011 Capital Improvements Program identifies funding for phase one of the McKinney Wastewater Treatment Plant scheduled for FY 2006. With the construction of the McKinney Wastewater Treatment Plant, the existing 24 inch water line serving the site will be converted to a treated sewage effluent flow. Water service will then be provided by a 16 inch water line extending from Ballenger Creek Pike through the Linton Farm PUD.

G. SUMMARY

Public facilities are and will be available to serve the proposed development.

3. PRESENT AND FUTURE TRANSPORTATION PATTERNS:

The property is situated at the northwest corner of New Design Road and Elmer Derr Road. New Design Road is a north-south major arterial connecting the southern part of the County with Frederick City. English Muffin Way runs east-west and is designated a major arterial. It currently

dead-ends at the site from the east, but will be extended through to Elmer Derr Road by the applicant. Ultimately, English Muffin Way will be a major arterial from its intersection with Buckeystown Pike to U.S. 15 to the west.

The Maryland State Highway Administration 2004 Average Annual Daily Traffic Counts are:

- New Design Road south of English Muffin Way: 2,173 vehicles per day northbound; 2,614 southbound.

- New Design Road north of English Muffin Way: 2,940 northbound; 4,584 southbound.

An extension of English Muffin Way is proposed in the Adamstown Region Plan to provide an east-west connector through the Adamstown Region connecting all major north-south routes. The applicant has offered to build this road extension as it traverses the property according to County standards for a major arterial. To the south of the site along Ballenger Creek Pike, a project for the reconstruction of a two-lane bridge over Tuscarora Creek is identified in the County Capital Improvement Program for FY 2007. The project will improve the approach roadway to minor arterial standards.

The applicant has offered to construct three connections with surrounding properties. The first will connect the extended English Muffin Way with a primary vehicular circulation route through the neighboring Linton Farm PUD. Feeding off this road will be an extension of Clarendon Drive leading into the Wellington Trace Development to the northeast. A third connection is proposed between the internal circulation network of the multi-family portion of the Linton Farm PUD and the townhouse portion of this development.

The planned extension of English Muffin Way will serve to improve the arterial road network within the Adamstown Planning Region by providing increased inter-county access across the Region. This road improvement is a component of a system of major arterials designated in the Region Plan intended to improve access in the northern portion of the Adamstown Region.

4. COMPATIBILITY WITH EXISTING AND PROPOSED DEVELOPMENT FOR THE AREA.

The site is located at the juncture of three dominant land uses: agricultural, industrial and residential. To the north of the site, much of the land is in residential development, industrial development is to the south and east of the site, and agricultural land is to the west.

The residential development on the northeastern and northwestern sides of the site includes the Wellington Trace PUD (4.9 dwelling units per acre) and the Linton Farm PUD (10 - 14 and 14 - 20 dwelling units per acre). The industrial and commercial development to the east and south of the site includes the Wedgewood Business Park, the Bowman Plains Industrial Park, TAMKO Asphalt and ESSROC Cement. The area to the southwest of the site is predominately farmland. Immediately across from the site on the southeast side of New Design Road is a property zoned Agriculture which is occupied by an electrical substation owned by Allegheny Power. There are no historic structures on the property.

5. RECOMMENDATION OF THE FREDERICK COUNTY PLANNING COMMISSION.

The Frederick County Planning Commission recommended approval of the PUD floating zone with four conditions.

6. RELATIONSHIP WITH THE FREDERICK COUNTY COMPREHENSIVE PLAN.

Based on a literal interpretation of the Comprehensive Plan Map in the Adamstown Region Plan, the proposed extension of English Muffin Way asymmetrically bisects the Younkins property and crosses the neighboring property (Linton Farm PUD) to connect with the an existing intersection at Ballenger Creek Pike. The plan designates the land to the north of this road alignment as Medium Density Residential, and the land to the south as Limited Industrial.

During the approval process of the Linton Farm PUD, it was determined that the actual road alignment for the proposed extension of English Muffin Way would be moved to the south to intersect with Elmer Derr Road instead of Ballenger Creek Pike. It was determined in this case that the intent of the Region Plan was that the road alignment would define the boundary between land use designations. Therefore, as the actual road alignment was modified from that shown in the Comprehensive Plan, so too would the boundaries of the land use designations be modified. Given the

mismatch in the Younkens Farm PUD between the road alignments as shown in the Comprehensive Plan and as shown by the applicant, the same interpretation can hold true.

Properties are eligible for PUD zoning if they are designated Low, Medium, or High Density Residential in the Comprehensive Plan. The portion of the Younkens Farm parcel located above the proposed extension of English Muffin Way is designated Medium Density Residential in the Adamstown Region Plan.

The Medium Density Residential designation allows a density range of 5-11 dwelling units per acre. The gross density of the PUD cannot exceed the maximum density specified for the residential classification in the Comprehensive Plan. The proposed gross density of the PUD is 5.5 dwelling units per acre, and therefore is consistent with the density range established by the Comprehensive Plan.

Based on all the evidence submitted in this matter, the Board of County Commissioners determines that this project concept is both feasible and desirable. The Board determines that the proposal complies with all the purposes of the PUD classification and will further those purposes. The Board finds that this proposal is compatible with adjoining land uses and will have no significant adverse impacts. The Board finds that this proposal is in the public interest. The Board finds that the required conditions are related both in nature and extent to the impact of the proposed development. The Board establishes the maximum gross land use density as 5.5 dwelling units per acre, based on the proposed 237 dwelling units on the 43.15 acre site.

The proposed PUD Floating Zone classification will be granted subject to the conditions stated below.

ORDINANCE

BE IT ENACTED AND ORDAINED BY THE BOARD OF COUNTY COMMISSIONERS OF FREDERICK COUNTY, MARYLAND, that for the reasons set forth above, Rezoning Case No. R-05-08 is hereby **GRANTED** for the reclassification of 43.15 acres of land, more or less (as delineated in the record), from the Agricultural classification to the Planned Unit Development (PUD) Floating Zone classification, subject to the following conditions¹:

1. A maximum of 237 dwelling units may be constructed.
2. The applicant shall dedicated to the County a minimum of 100' right of way for the extension of English Muffin Way.
3. The applicant shall design and construct the extension of English Muffin Way subject to the review and approval of the County's Division of Public Works.
4. The applicant shall provide street connections with the adjoining Wellington Trace and Linton developments.

The conditions included as part of the granting of this Planned Unit Development (PUD) floating zone request are deemed necessary for the health, safety and welfare of the community; are imposed as an integral part of this approval; and are not separable from the decision to grant the requested floating zone classification. If, for any reason, a court of competent jurisdiction finds that any material portion of any of these conditions is substantially invalid or unenforceable, the zoning shall revert to the previous Agriculture (A) zoning classification.

¹ The term "applicant" or "developer" as used in this Ordinance includes all present and future owners and developers of the property. These conditions run with the land.

AND BE IT FURTHER ENACTED AND ORDAINED BY THE BOARD,
that the Zoning Administrator is hereby authorized and directed to make the
appropriate change on the Zoning Map showing this reclassification, with conditions,
as indicated above.

The undersigned hereby certify that this Ordinance was approved and adopted
on the 16th day of November, 2006.

BOARD OF COUNTY COMMISSIONERS
OF FREDERICK COUNTY, MARYLAND

By: Michael L. Cady
Michael L. Cady, Vice President

John R. Lovell, Jr.
John R. Lovell, Jr.

ATTEST:

Douglas D. Browning
Douglas D. Browning
County Manager

Bruce L. Reeder
Bruce L. Reeder

Commissioners John L. Thompson, Jr. voted against the proposed
reclassification. Commissioner Jan H. Gardner was absent.

Msc 11/16/06